



13 September 2016

The General Manager
Port Stephens Council

Objection: DA 16 - 2016 - 557 – 1 9 Shoal Bay Rd, Shoal Bay 2315 NSW (LOT: 11 DP: 25297) - Motel Accommodation - Redevelopment of Santa Catalina Motel including Demolition of Existing Building and Construction of Four Storey Building Comprising 16 Units and Associated Car Parking Introduction

Tomaree Ratepayers and Residents Association Inc. (TRRA) objects to this proposal on the basis that the Applicant has not presented convincing arguments either for a significant exception to the LEP height restriction, or for an exception to the off-street parking requirements.

The PSLEP 2013 Height of Buildings plan provides for a maximum building height of 9m above natural ground level on this site; the application is for a building of 12.9m, this would be a 43% increase. With such a large change being considered TRRA submits that such a significant change should be the subject of a re-zoning proposal. The Development Application should either be withdrawn or refused and a rezoning application be submitted instead if the applicant wishes to proceed.

2013 LEP

Extensive advertising and consultation was undertaken during the most recent revision of the LEP, and at that time all landowners, including those with property along this particular strip of Shoal Bay Road, had the opportunity to argue for an increase in allowable height. TRRA supported the approach taken in the revised LEP to maintain the position of a Shoal Bay commercial area zoned Local Centre (B2) and with a height limit of 15 metres, with most of the rest of Shoal Bay zoned medium density residential (R3) with a height limit of 9 metres. This latter zoning and height limit applies to all the properties along Shoal Bay Rd to the east of Tomaree Road, which is appropriate given their proximity to the Tomaree National Park, providing in effect for a tapering down of heights away from the Local Centre.



Arguments presented for granting an exception to development standards

The applicant has made several arguments for an ‘objection’ to the development standard. This is misleading – they are not objecting to the standard, rather to the application of the standard to their proposal; i.e. seeking a variation or waiver. TRRA submits that none of the applicant’s arguments are convincing:

- a) *There are buildings located opposite which are four storeys in height.*

These buildings were built prior to the current LEP; hence this is not a valid argument. TRRA has previously raised the issue of one-off exceptions setting a precedent and Council has strongly denied that this is the case. The applicant expressly argues ‘*There are other situations in the locality where Council has varied the height limit of buildings.*’ (SEE p7) – to be consistent, Council must reject this as a relevant consideration and must assess this application solely on its own merits.

We also note that the Shoal Towers building on the other side of Lilian St is nearly 2 metres lower (AHD) than the proposed height of this new motel. In terms of visual impact, which is the primary consideration here, it is the actual height that matters rather than the number of storeys (new building standards have led to greater height per storey).

- b) *The building is of a good design which will make a positive contribution to the streetscape and improve the accommodation offering in Nelson Bay.*

Whether the design is “good” is a subjective judgement (the elevations in the Notification plan suggest it is unexceptional) and is not a relevant consideration under clause 4.6 of the LEP. It certainly doesn’t justify a 43% increase in height. The claim that proposed building will ‘make a positive contribution to the streetscape’ compared to the existing low level building screened by trees along the street frontage, is again a subjective judgement which we dispute.

As to the accommodation point, no evidence is presented that there is a particular need for this type of accommodation in the area. If such a need exists why haven’t there been any other small scale motel DA’s submitted in the past 10 years? We observe that a number of small motels have closed or appear to be struggling to survive. Even larger motel/hotel developments have not gone ahead. The proposed Marina Resort development on Magnus St, Nelson Bay has recently applied for a variation to allow for more of the units to be offered for permanent residence.

- c) *A three storey building comprising 12 units could be constructed on the site without the provision of off street parking on a like for like basis. The additional level will assist in improving the availability of parking during the peak holiday season thus providing an improved experience for holiday makers and improve local amenity.*

The applicant is seeking a partial waiver of the car parking requirements that would normally apply to a new development of this type. They admit that *'the provision of parking does not meet Council's DCP requirements'* but seek to justify this on the basis that the existing motel has no off-street parking and that the proposed 11 off-street spaces is therefore an improvement. We question their assertion that they could redevelop a three storey 12 unit building without providing off street parking – surely the current standards would apply to any redevelopment?

In any case, we do not understand why a mere improvement on the current parking provision would be considered sufficient – the current requirements in the DCP have been imposed for a reason, and there are no special circumstances relating to this site, or proposed development, which would justify a waiver.

We believe that even if the assessment was independent of existing requirements, 11 spaces would not be enough for the proposed 16 units. It is almost certain that all guests will arrive by car therefore there should be at least 16 spaces plus visitor parking. It is also very likely that at least a few guests will actually have two cars and/or a boat.

- d) *The proposed 4 storey building will not cast shadows on adjoining properties which could be considered to be a reason to cause a detrimental impact on residential amenity*

TRRA considers this to be an issue primarily for adjacent property owners or residents, but we find it surprising that the applicant asserts there will be no overshadowing given the proximity of the proposed building to its neighbours to the east. We note that two objections have already been received (and posted to the DA Tracker website) about overshadowing.

- e) The building will not significantly impact on the views enjoyed by neighbouring properties

We make no comment on this claim, which should be assessed objectively.

- f) *There are other situations in the locality where Council has varied the height limit of buildings. There is no public benefit in maintaining the development standard where based on merit, a higher building is considered appropriate in the circumstances.*

See our response to point a) above.

- g) *Without the ability to build a four level building, the project is commercially unviable, resulting in no change to the existing situation, which is considered to present a negative offering for the tourist. The existing building does not meet building standards for buildings which adjoins a fire zone. If the development does not proceed, this existing unsatisfactory situation will remain.*

This is not a relevant consideration and in any case is not supported by evidence.

No evidence has been provided comparing the estimated return on a three level development (without the need for a lift) that would comply with the height limits with this proposed four level development. It is very easy for developers to assert that their projects are not viable without relaxation of planning requirements but such assertions must always be viewed with scepticism. The planning system sets out community expectations in zoning and other constraints – land values should reflect those constraints such that developments of the type envisaged for each zone are viable. Consent authorities should not be influenced by unsubstantiated commercial claims.

As mentioned in our response to point (b) there is no proof that there is a need for this type of accommodation in the area. The site is clearly very valuable; the alternative of a high quality residential units within the 9 metre height limit is not discussed. There is a widespread view, shared by the strategic planning section of Council, that the Tomaree peninsula needs more permanent residential developments rather than more tourist accommodation.

Conclusion

For the reasons given above, we submit that this DA be refused.

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